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7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SANTA CRUZ**
10

11 Santa Cruz County Greenway,

12 Petitioner,

13 vs.

14 Santa Cruz County Regional Transportation
Commission,

15 Respondent.
16

17 Progressive Rail, Inc. and St. Paul & Pacific
18 Railroad, LLC,

19 Real Parties in Interest.
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CASE NO. 18CV02101

**OPPOSITION TO PETITIONER'S
OPENING BRIEF**

(Cal. Code Civ. Proc. §§ 1085, 1094.5;
California Environmental Quality Act)

Assigned for All Purposes to Hon. Paul
Burdick

Date: December 14, 2018
Time: 9:00 a.m.
Dept: 5
Judge: Hon. Paul Burdick

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I. INTRODUCTION

Petitioner Santa Cruz County Greenway (“Petitioner”) cannot use the California Environmental Quality Act (CEQA), or any other open-ended state environmental pre-clearance law, to interfere with real parties Progressive Rail, Inc. and St. Paul & Pacific Railroad, LLC’s (collectively “St. Paul”) rail operations. Any such interference is preempted by the Interstate Commerce Commission Termination Act (ICCTA). While Petitioner’s CEQA claims should be dismissed in their entirety for the reasons set forth in Santa Cruz County Regional Transportation Commission’s (“RTC”) brief, if this Court were to find that the RTC violated CEQA, any remedy it might consider must be narrowly tailored to avoid interference with St. Paul’s freight operations.

II. FACTS AND STANDARD OF REVIEW

St. Paul fully joins the RTC’s statement of facts and standard of review, and offers supplemental facts to demonstrate Petitioner’s inability to use CEQA to attack St. Paul’s operations.

A. Union Pacific Railroad Company Retained A Freight Easement Over The Line

Union Pacific Railroad Company retained the freight easement and associated common carrier obligation when it sold its approximately 31 miles of track (“Line”) to the RTC. (AR 16, 3437–3534, 3586.) The freight easement included the right to operate freight service along the Line, and to “reconstruct, maintain, repair, relocate, and/or remove existing and/or future railroad, rail and railroad-related equipment, facilities and transportation systems necessary for and related to freight rail operations.” (AR 3437.) Union Pacific also retained its common carrier status, which required it to provide “transportation or service on reasonable request” (49 U.S.C. § 11101(a)) and subject it to the Surface Transportation Board’s (STB) regulations (§ 11101(f)). Only STB authorized assignment or abandonment can relieve a common carrier of its obligations. (49 U.S.C. §§ 10901, 10903.)

B. The STB Approves Union Pacific’s Request To Assign The Freight Easement To Iowa Pacific Holdings, Exempting It From Environmental Review

In August 2012, the STB approved Union Pacific’s request to assign the freight easement along the Line to Santa Cruz and Monterey Bay Railway Company, which was owned by Iowa Pacific Holdings (“Iowa Pacific”). (*Santa Cruz & Monterey Bay Ry. Company–Acquisition & Operation Exemption–Union Pac. R.R. Co.* (STB, Aug. 17, 2012, No. FD 35659) 2012 WL 3550779 (“*Iowa*

1 *Pacific STB Exemption*”); see AR 3589–3592.) The STB found the assignment exempt from
2 environmental and energy review. (*Iowa Pacific STB Exemption*; see 49 C.F.R. § 1150.31 [providing
3 requirements for an environmental and energy exemption].) The STB decision was appealable to the
4 Ninth Circuit Court of Appeals or the Court of Appeals for the District of Columbia (28 U.S.C.
5 § 2321(a)), but no one appealed. The STB’s approval resulted in Iowa Pacific having common carrier
6 obligations (49 U.S.C. § 11101) for the Line’s freight service.

7 The RTC and Iowa Pacific entered into an Administration, Coordination, and License
8 Agreement (“ACL”) (AR 3535–3584), and on October 12, 2012, Santa Cruz County recorded the
9 assignment of the freight easement (AR 3348). The STB found the ACL, together with the freight
10 easement, gave Iowa Pacific “sufficient control over the Line to carry out its common carrier
11 operations” for RTC to remain a non-carrier after entering into the ACL. (AR 3588.)

12 **C. Iowa Pacific Fails To Perform And The STB Approves Assignment Of The Freight**
13 **Easement To St. Paul**

14 Iowa Pacific failed to successfully operate the Line and worked with the RTC to find an
15 operator to take over its common carrier obligations and the freight easement. (AR 509–510.) The
16 RTC selected St. Paul to succeed Iowa Pacific. (AR 1179–1180; see AR 504–506.)

17 In June 2018, the RTC approved the ACL with St. Paul, which is a voluntary agreement that
18 establishes expectations and conditions regarding payment, future passenger service, rail car storage,
19 maintenance, liability, and other terms related to the RTC’s use of the Line. (AR 16–44.) The ACL
20 acknowledges St. Paul’s independent right to operate the Line’s freight service, stating
21 “[n]otwithstanding the rights retained by the [RTC] under this [ACL], the exercise of such rights by
22 the [RTC] may not materially interfere with [St. Paul]’s Freight Service rights and obligations under
23 federal law, or rights under the Freight Easement, unless first approved by the STB.” (AR 18.) Under
24 the ACL, the RTC retained the right to use the Line, but “may not materially interfere with [St. Paul]’s
25 rights and operations under this [ACL] or [St. Paul]’s Freight Service rights and obligations under
26 federal law or under the Freight Easement, unless first approved by the STB.” (AR 24.)

27 On August 1, 2018, the STB approved Iowa Pacific’s assignment of the freight easement to St.
28 Paul, causing St. Paul to take over common carrier obligations for the Line. (Request for Judicial

1 Notice (“RJN”), Ex. 1 at p. 1.) The STB found the change in operators was exempt from
2 environmental review (*id.*, citing 49 C.F.R. § 1150.31) and no one appealed that determination. Iowa
3 Pacific then recorded the assignment of the freight easement to St. Paul. (RJN, Ex. 2.)

4 On October 24, 2018, the STB re-confirmed that the RTC is not itself a rail carrier by right of
5 having acquired the rail infrastructure from Union Pacific. In particular, the STB concluded that the
6 ACL between the RTC and St. Paul is substantially similar to the ACL the RTC had signed with Iowa
7 Pacific. Most importantly, the current ACL retains the “No Material Interference with Freight
8 Service” provision that protects St. Paul’s independent private right to freight rail service. (RTC’s
9 RJN, Ex. A at p. 3). In the STB’s words, the new ACL, like the prior ACL, “would not allow [RTC] to
10 interfere unduly with freight rail operations or result in it acquiring any rights or obligations to provide
11 freight rail service.” (*Id.* at 4.)

12 III. ARGUMENT

13 A. Petitioner’s CEQA Action Against St. Paul Is Preempted

14 1. ICCTA Categorically Preempts State Control Over Private Rail Transportation

15 The Supremacy Clause of the U.S. Constitution provides that state laws must yield to federal
16 laws. (U.S. Constitution, art. VI, cl. 2.) The Commerce Clause of the Constitution (Art. 1, sec. 8, cl. 3)
17 gives Congress plenary power to legislate with regard to activities that affect interstate commerce.
18 Through ICCTA, Congress has exercised that power over railroads. (49 U.S.C. §§ 10101 et seq.)

19 When Congress passed ICCTA in 1995, it broadened the longstanding preemption of state
20 laws. ICCTA’s preemption clause provides that “the jurisdiction of the Board over transportation by
21 rail carriers” over any track that is part of the interstate rail network is “exclusive.” (49 U.S.C.
22 § 10501(b).) “Transportation” includes “a locomotive, car, vehicle, vessel, warehouse, wharf, pier,
23 dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of
24 passengers or property, or both, by rail, regardless of ownership or an agreement concerning use” and
25 “services related to that movement, including receipt, delivery, elevation, transfer in transit,
26 refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property.” (49
27 U.S.C. § 10102(9).) ICCTA further states that “the remedies provided under this part with respect to
28 regulation of rail transportation are exclusive and preempt the remedies provided under Federal or

1 State law.” (49 U.S.C. § 10501(b).)

2 Consistent with ICCTA’s plain language, federal courts have concluded that ICCTA preempts
3 state regulation of rail transportation, including state environmental regulation. (E.g., *Oregon Coast*
4 *Scenic R.R., LLC v. Oregon Dep’t of State Lands* (9th Cir. 2016) 841 F.3d 1069 [ICCTA preempted
5 track repair work from a state law requiring a permit before removing material within waters
6 designated “Essential Salmonid Habitat”]; *Green Mountain R.R. Corp. v. Vermont* (2d Cir. 2005) 404
7 F.3d 638 [ICCTA preempted application of a state environmental process that would impose
8 mitigation to a rail carrier seeking a permit to construct a transloading facility on its land]; *City of*
9 *Auburn v. U.S. Government* (9th Cir. 1998) 154 F.3d 1025 [repairs and improvements to an existing
10 freight line exempt from state and local environmental regulation].)

11 California courts also agree that ICCTA preempts the application of state laws, including
12 environmental laws such as CEQA, to regulate private rail carriers where such regulation would
13 unduly interfere with rail transportation. (*Friends of the Eel River v. North Coast Railroad Authority*
14 (2017) 3 Cal.5th 677, 714 (“FOER”); *People v. Burlington Northern Santa Fe R.R.* (2012) 209
15 Cal.App.4th 1513, 1531.) As FOER noted, “CEQA remedies could halt service on a line pending
16 environmental compliance even though the rail carriers were licensed by the STB to undertake
17 operations, and even though the STB may have determined that no environmental review was
18 required.” (*Id.* at p. 715.) For this reason, “[a]lthough CEQA does not on its face specifically regulate
19 rail transportation, its enforcement mechanisms requiring environmental compliance as a condition of
20 project approval involving a private rail carrier would have the effect of regulating rail transportation,
21 a result inconsistent with 49 United States Code section 10501.” (*Id.*; see *id.* at pp. 738–739
22 [explaining why CEQA is preempted by ICCTA as applied to a specific private rail operator].) FOER
23 is consistent with the STB’s decisions in cases such as *Desertxpress Enterprises, LLC –Petition for*
24 *Declaratory Order* (STB, June 25, 2007, No. FD 34914) 2007 WL 1833521, where it concluded
25 ICCTA preempted the application “state permitting and land use requirements” such as CEQA to a
26 private rail carrier. (*Id.* at p. *3.)

27 These authorities are uniform and unequivocal that ICCTA preempts state environmental
28 regulation that interferes with a private rail carrier’s transportation, including repair and operation.

2. ICCTA Preempts Petitioner's CEQA Suit As Applied To St. Paul

Petitioner is incorrect when it argues that ICCTA does not preempt its CEQA lawsuit against St. Paul (Petitioner's Opening Brief ("Opening Br.") at p. 27:21). Petitioner's claim is based on a misunderstanding of *FOER* and the RTC's limited role in St. Paul's operations.

In addition to upholding federal preemption of CEQA as applied to private rail carriers, *FOER* clarified that when a state agency that is itself a rail carrier needs to make a discretionary decision, CEQA will apply to the state agency's internal decisions because that is not regulation, but rather self-governance that is not facially preempted. (*FOER, supra*, 3 Cal.5th at p. 723.) Petitioner incorrectly assumes the RTC is a rail carrier like the state railroad agency in *FOER* (*id.* at p. 711), but the RTC is not a rail carrier, as the STB just reaffirmed. (RTC's RJN, Ex. A.) Regardless of whether the RTC properly relied on a CEQA exemption, and regardless of whether Petitioner is too late to challenge the decision to seek federal emergency money to repair the storm-damaged the Line, the RTC cannot regulate St. Paul's rail transportation under CEQA. Any attempt by the RTC to apply CEQA to regulate St. Paul's freight rail operations would present a classic case for finding federal preemption.

Preemption also prevents Petitioner, who is standing in for the State Attorney General, from using CEQA to regulate St. Paul's rail operations. Accordingly, this Court cannot grant Petitioner the injunction it seeks (Petition at p. 16:4–7). (See *FOER, supra*, 3 Cal.5th at p. 739 ["plaintiffs cannot rely upon CEQA as a basis for an injunction directed at [a private rail carrier] to halt its operations"].) An injunction would directly conflict with ICCTA's exclusive remedies (see 49 U.S.C. §10501(b)), one of which restricts exclusively to the STB the power to enjoin operations. (See 49 U.S.C. § 11702(1)). It also conflicts with ICCTA's vesting in the STB sole power to determine when rail operations should cease. (49 U.S.C. § 10903(d) ["a rail carrier providing transportation subject to the jurisdiction of the Board under this part may— . . . discontinue the operation of all rail transportation over any part of its railroad lines; only if the Board finds that the present or future public convenience and necessity require or permit the . . . discontinuance].)

Even if the RTC prepared additional CEQA analysis, ICCTA would preempt the RTC's ability to regulate St. Paul's freight operations through requiring compliance with mitigation measures. (See *FOER, supra*, 3 Cal.5th at p. 715 ["Permitting a state to regulate private railroad operations even

1 where STB regulation is absent or has been satisfied is also inconsistent with the broad deregulatory
2 purpose of the ICCTA.”].) The RTC could ask St. Paul whether it would voluntarily consider
3 amending the ACL, but cannot require St. Paul to do so. Even if this Court suspends the ACL, St. Paul
4 would retain its STB authorization and obligation to provide freight service on the Line. (See 49
5 U.S.C. § 10903 [only STB can authorize abandonment]; RTC Opposition at pp. 16–17.)

6 As Petitioner observes (Opening Br. at p. 30:20–22), Union Pacific voluntarily agreed to give
7 the RTC the right to have some input into who operates the Line by requiring the freight easement
8 owner to enter into an ACL with the RTC (AR 3438). The ACL allows the RTC to protect its property
9 through a contract that explains responsibility for common easement issues such as repair and
10 maintenance (AR 30–32), license fees (AR 32–33), insurance requirements (AR 36–37), and scope of
11 indemnity (AR 39). The ACL, however, also acknowledges the primacy of the private freight service
12 easement and the ultimate authority of the STB. Once the RTC agrees to a freight operator, the ACL
13 gives the RTC no control over that operator’s operations. (E.g., AR 18 [RTC cannot materially
14 interfere with St. Paul’s common carrier rights and obligations or the freight easement].)

15 Even if, in the future, the RTC and St. Paul came to some *voluntary* agreement about certain
16 mitigation measures, if such measures proved to unduly burden freight operations, the STB or a court
17 could void the voluntary agreement. (See *Blanchard Sec. Co. v. Rahway Valley R.R.* (3d Cir. 2006)
18 191 Fed. App’x 98, 100 [finding state law contract claims preempted].)

19 In sum, federal law preempts Petitioner’s attempt to use CEQA to interfere with St. Paul’s
20 freight operations.

21 3. St. Paul Is Improperly Joined And Must Be Dismissed

22 Because ICCTA preempts CEQA’s application to St. Paul, St. Paul is not a “real party in
23 interest” in this case and should be dismissed. “‘Real party in interest’ has been generally defined as
24 ‘any person or entity whose interest will be directly affected by the proceeding.’” (*Connerly v. State*
25 *Personnel Bd.* (2006) 37 Cal.4th 1169, 1178 [ellipsis and citations omitted].) The real party in interest
26 can “be ‘the person or entity in whose favor the acts complained of [operate]’ or ‘anyone having a
27 direct interest in the result,’ or ‘the real adverse party . . . in whose favor the act complained of has
28 been done.’” (*Id.* [citation omitted].) In CEQA cases, the real party in interest is generally the party

1 that received a permit or approval from the governmental entity and must be named in the case and
2 served. (Pub. Resources Code § 21167.6.5.) St. Paul is not an applicant for an approval or a permit
3 from the RTC. As discussed in the RTC's brief (RTC Opposition at p. 16), St. Paul obtained its
4 operating authority from the freight rail easement and the STB.

5 As discussed above, due to ICCTA's preemptive effect, Petitioner cannot require St. Paul to
6 undergo CEQA review as a condition of freight operations or use CEQA remedies to halt the Line's
7 freight service. Petitioner has no ability to interfere with freight transportation by invoking CEQA.

8 Stated differently, this Court lacks subject matter jurisdiction over St. Paul's freight operations,
9 which are exclusively regulated by the STB. (49 U.S.C. § 10501; see *Totten v. Hill* (2007) 54
10 Cal.App.4th 40, 50–51 [explaining when preemption leads to loss of subject matter jurisdiction].) If
11 Petitioner were truly opposed to continued freight rail operations on the Line, it should have appealed
12 the STB's environmental exemption of the transfer of Iowa Pacific's common carrier obligations to St.
13 Paul to a federal court of appeals. Instead, Petitioner chose to ask this Court to tread on STB's
14 exclusive jurisdiction and issue a ruling that would invade St. Paul's federally authorized freight
15 operations. This Court must decline to do so.

16 Because this Court cannot issue a remedy that would burden St. Paul's rail operations, St. Paul
17 should be dismissed. (See *Jefferson-Pilot Life Insurance Co. v. Krafka* (1996) 50 Cal.App.4th 190,
18 195 ["In the absence of subject matter jurisdiction, plaintiff's complaint must be dismissed."].)
19 Further, without subject matter jurisdiction over St. Paul, the Court should dismiss the entire case
20 based on its inability to grant relief to Petitioner.

21 **B. Track Repairs Are Not Subject To Regulation Under CEQA**

22 While this Court does not need to reach the issue of "track repair" specifically, if it does
23 choose to reach the issue, it should hold that track repair is an inherent component of rail operations.
24 Operating rights without maintenance and repair rights would be illusory.

25 No one disputes that St. Paul is a rail carrier. (See 49 U.S.C. § 10102(5) [defining "rail
26 carrier"].) The STB has exclusive jurisdiction over transportation by rail carriers between "a State and
27 a place in the same or another State as part of the interstate rail network." (49 U.S.C. § 10501(a)(1),
28 § 10501(a)(2)(A).) Therefore if the track repair is "transportation" by a "rail carrier" as part of the

1 interstate rail network, the STB has exclusive jurisdiction over it, preempting conflicting state
2 regulation (49 U.S.C. §§ 10501(a), (b).)

3 Track repair qualifies as “transportation,” which ICCTA defines broadly to include “equipment
4 of any kind related to the movement of passengers or property, or both, by rail, regardless of
5 ownership or an agreement concerning use” (49 U.S.C. § 10102(9)). (*Oregon Coast, supra*, 841 F.3d
6 at p. 1073.) Accordingly, even though St. Paul does not own the Line outright, only an easement right
7 to use it, the Line is part of the equipment St. Paul uses to move property and its repair is thus
8 transportation by a rail carrier subject to STB’s jurisdiction.

9 The fact that the RTC, a non-rail carrier, will undertake the federally-funded repair work does
10 not change the equation. (See *id.* at p. 1074 [discussing factors used to determine if work by a non-rail
11 carrier can be considered an activity by a rail carrier].) To determine whether work done by a non-rail
12 carrier falls under the STB’s exclusive jurisdiction, courts ask whether there is a “sufficient degree of
13 integration between the work done by the non-carrier and the authorized rail carrier’s own
14 operations.” (*Id.*) Here, the RTC’s track repair work is integral to St. Paul’s ability to meet its common
15 carrier obligations. St. Paul, as the common carrier, would be liable to shippers if the RTC delayed
16 repair beyond what is reasonable and thus is invested in ensuring repairs occur as planned. (See *GS*
17 *Roofing Prods. Co. v. Surface Transp. Bd.* (8th Cir. 1998) 143 F.3d 387, 394 [common carrier
18 assessed damages because it breached duty by failing to repair a line and restore service in a
19 reasonable time after a storm].)

20 Regardless of whether the RTC or St. Paul repairs the tracks, the work “is properly considered
21 ‘transportation by rail carrier’ within the meaning of 49 U.S.C. § 10501(a)(1).” (*Oregon Coast, supra*,
22 841 F.3d at p. 1074.) Further, even though the Line is wholly in California, “[t]he fact these repairs are
23 integral to the functioning of a federally authorized track segment establishes that the repairs are done
24 ‘as part of the interstate rail network’ within the meaning of § 10501(a)(2)(A).” (*Id.* at p. 1076.)
25 Because the track repairs satisfy the requirements of both 49 U.S.C. section 10501(a)(1) and section
26 10501(a)(2), the STB has exclusive jurisdiction over the track repairs (49 U.S.C. § 10501(b)), and
27 state regulation of repairs is preempted. (See *id.* [concluding ICCTA preempted state environmental
28 laws that would have applied to track repairs undertaken by a non-rail carrier].) This is particularly

true of open-ended state regulation like CEQA that could indefinitely delay track repairs, which would interfere with St. Paul’s ability to meet its common carrier obligation to provide service on the Line. (See *Green Mountain, supra*, 404 F.3d at p. 643 [state preconstruction permit requirement preempted because it “‘unduly interfere[s] with interstate commerce by giving the local body the ability to deny the carrier the right to construct facilities or conduct operations,’ [citation]; and . . . it can be time-consuming, allowing a local body to delay construction of railroad facilities almost indefinitely.”].)

Petitioner may assert that there is a tension between *Oregon Scenic* holding described above, and *FOER*'s dicta regarding federal preemption of track repairs (*FOER, supra*, 3 Cal.5th at p. 725). Here, *Oregon Scenic* provides the better reasoning because *FOER*'s dicta discussing the notion that ICCTA overlooked repair work flows in part from the unique facts of the case before it. There, the government agency rail carrier had made a commitment to the state to undertake CEQA as a condition of receiving state funds for track repairs. (*Id.* at pp. 692–693 [finding it significant that NCRA “committed to CEQA compliance,” including as a condition to receive funds for track repairs].) In contrast, the RTC's funding for track repairs comes from the *federal* government. (AR 2337–2340.) The RTC did not commit to CEQA as a condition of receiving federal funds, but did commit to undertaking timely repairs (AR 2338), consistent with STB's requirements. As the RTC's brief explains, Petitioner neglected to challenge the RTC's decision to seek federal repair funds, which bars any CEQA claim against the decision to repair as untimely.

To the extent the Court finds the RTC failed to meet CEQA’s requirements despite the RTC’s persuasive defense of its actions, any remedy this Court might issue must be narrowly tailored to avoid regulating St. Paul. Delaying or interfering with the federally funded repair work would unduly interfere with St. Paul’s rail transportation. (See 49 U.S.C. § 11101(a) [common carrier obligated to timely serve]; *GS Roofing Prods., supra*, 143 F.3d at p. 391 [common carrier violated ICCTA by unreasonably delaying track repairs].)

IV. CONCLUSION

For the foregoing reasons, St. Paul's rail transportation activities are exempt from CEQA regulation and subject to STB's exclusive jurisdiction. Accordingly, St. Paul is an improperly joined party and must be dismissed.

1 DATED: October 29, 2018

COX, CASTLE & NICHOLSON LLP

3 By:

4 
Andrew B. Sabey

5 Attorneys for Real Parties in Interest Progressive
6 Railroad, Inc. and St. Paul & Pacific Railroad,
7 LLC

1 **PROOF OF SERVICE AND CERTIFICATION**

2 **CASE NAME:** *Santa Cruz County Greenway v. Santa Cruz County Regional*
3 *Transportation Commission, et al.*

4 **CASE NUMBER:** *Superior Court – Santa Cruz County Case No. 18-CV-02101*

5 I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to
6 the within action; my business address is 50 California Street, Suite 3200, San Francisco, California 94111.

7 On **October 29, 2018**, I served the foregoing documents described as:

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- 1) **OPPOSITION TO PETITIONER'S OPENING BRIEF**
 - 2) **REAL PARTIES IN INTEREST'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION BRIEF**

in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

<u>Attorney for Plaintiff</u> <u>Santa Cruz County Greenway</u> Rachel B. Hooper Shute Mihaly & Weinberger 396 Hayes Street San Francisco, California 94102 Telephone: 415-552-7272 Facsimile: 415-552-5816 Email: hooper@smwlaw.com	<u>Attorneys for Defendant – Santa Cruz</u> <u>County Regional Transportation Commission</u> Sabrina V. Teller Remy Moose Manley LLP 555 Capitol Mall, Suite 800 Sacramento, California 95814 Telephone: 916-443-2745 Email: steller@rmmenvirolaw.com Email: cberglund@rmmenvirolaw.com T. Brooke Miller Office of the County Counsel, County of Santa Cruz 701 Ocean Street, Room 505 Santa Cruz, California 95060 Telephone: 831-454-2040 Email: t.brooke.miller@santacruzcounty.us
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On the above date:

- ☒ **BY E-MAIL:** I served the above-referenced document by electronic mail to the e-mail address of the addressees pursuant to Rule 2.260 of the California Rules of Court. The transmission was complete and without error and I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- ☒ **BY U.S. MAIL:** The sealed envelope with postage thereon fully prepaid was placed for collection and mailing following ordinary business practices. I am aware that on motion of the party served, service is presumed invalid if the postage cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing set forth in this declaration. I am readily familiar with Cox, Castle & Nicholson LLP's practice for collection and processing of documents for mailing with the United States Postal Service and that the documents are deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on **October 29, 2018** at San Francisco, California.


Peggy Sanchez